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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/672,697	09/26/2003	Eshwari P. Komarla	42P16549	9222

8791 7590 07/02/2008  
BLAKELY SOKOLOFF TAYLOR & ZAFMAN LLP  
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SUNNYVALE, CA 94085-4040

EXAMINER
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CHU, GABRIEL L

ART UNIT	PAPER NUMBER
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2114

MAIL DATE	DELIVERY MODE
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07/02/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>		<b>Applicant(s)</b>	
	10/672,697		KOMARLA ET AL.	
	<b>Examiner</b>		<b>Art Unit</b>	
	Gabriel L. Chu		2114	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 28 April 2008.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-28 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 26 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

**DETAILED ACTION**

***Claim Rejections - 35 USC § 103***

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
2. **Claims 1-5, 7-12, 14 rejected under 35 U.S.C. 103(a) as being unpatentable over US 6622260 to Marisetty et al. in view of US 6971044 to Geng et al. See previous rejection.**
3. **Claims 6, 13 rejected under 35 U.S.C. 103(a) as being unpatentable over US 6622260 to Marisetty et al. in view of US 6971044 to Geng et al. as applied to claim 1, 8 above, and further in view of US 20040054780 to Romero. See previous rejection.**
4. **Claims 15-28 rejected under 35 U.S.C. 103(a) as being unpatentable over US 6622260 to Marisetty et al. in view of US 6971044 to Geng et al. and US 20040054780 to Romero. See previous rejection.**
5. **Claims 1-5, 7-12, 14 rejected under 35 U.S.C. 103(a) as being unpatentable over US 6675324 to Marisetty et al. in view of US 6971044 to Geng et al. See previous rejection.**
6. **Claims 6, 13 rejected under 35 U.S.C. 103(a) as being unpatentable over US 6675324 to Marisetty et al. in view of US 6971044 to Geng et al. as applied to claim 1, 8 above, and further in view of US 20040054780 to Romero. See previous rejection.**

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7. **Claims 15-28 rejected under 35 U.S.C. 103(a) as being unpatentable over US 6675324 to Marisetty et al. in view of US 6971044 to Geng et al. and US 20040054780 to Romero.** See previous rejection.

***Response to Arguments***

8. Applicant's arguments filed 28 April 2008 have been fully considered but they are not persuasive.

9. Applicant argues (page 8) that Geng does not teach "determining" whether there is a peer node with an available NIC, but rather it defaults to the remaining control node. First of all, you cannot (successfully) fail over to something that is not there. Secondly, "determining" by what? How? Thirdly, Applicant makes no claim as to a negative determination. As such, in view of Applicant's interpretation, Geng may merely be interpreted as always "determining" the default.

10. Applicant argues (page 8-9) that in Geng, "the MAC address of the first node is failing over to the second control node... is not the same as sending the MAC address to the peer node and disabling the MAC address of the local node." Geng, by "enabling" the second node with the MAC address of the first has transferred that MAC address to that node. Whether Geng, actively or by some specific element, disables the first node is not claimed. However, it is disability inherent as the first is failed and there by "disabled". Applicant does not claim how or by what it must be "disabled", or how or by what the MAC address is "sent".

11. Applicant argues (page 9) that Geng does not enable the recovered control node with the MAC address, however admitting that Geng does disclose recovery of a failed

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node with the MAC address. Here again, Applicant reads more into a term, in this case “enable”, than is broadly reasonable. Applicant admits that the failed node is resumed, with the MAC address no less, but that this somehow is not “enabling” the MAC address on that node. Applicant does not claim how or by what the MAC address must be enabled.

### ***Conclusion***

12. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gabriel L. Chu whose telephone number is (571) 272-3656. The examiner can normally be reached on weekdays between 8:30 AM and 5:00 PM.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Scott Baderman can be reached on (571) 272-3644. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Gabriel L. Chu/  
Primary Examiner  
Art Unit 2114

gc